



Hazardous Materials Notice

Federal Railroad Administration, Office of Safety, Hazardous Materials Division
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Summary:

The purpose of this Hazardous Materials Notice is to discuss and clarify the FRA's (Federal Railroad Administration's) implementation of 49 CFR § 174.50 through the issuance of approvals that, with approval of the Associate Administrator for Safety, FRA, permit the continued movement of nonconforming bulk packages under certain specified conditions.

Discussion:

The movement approval process, now established in 49 CFR § 174.50, was developed in response to the generation of large numbers of emergency exemption requests by the regulated community in their effort to move non-conforming tank cars for repair. An emergency exemption (49 CFR 107.117) is generally issued to prevent a significant economic loss, neutralize a condition that threatens national security, or prevent injury to persons or property. Often times, the "significant economic loss" criterion was used even though the primary reason for the emergency exemption request was the necessity of moving a tank car to effect repairs that could not be accomplished at the car's current location.

The Federal Railroad Administration and the Research and Special Programs Administration sought a process that would increase movement efficiency without compromising the safety of hazardous materials transportation. The final rule (Docket HM-216, 61 FR 28677, June 5, 1996) consolidated and revised 49 CFR §§ 174.47, 174.48, and 174.50 (section 174.50 already allowed for short movements of nonconforming or leaking packages under certain conditions) into the current § 174.50. The new section prohibits the movement of packagings not conforming to the HMR (the hazardous materials regulations) without prior approval, or unless a short movement will reduce or eliminate an immediate threat or harm to human health or the environment. FRA's Hazardous Materials Division has prepared an explanatory discussion of the movement approval process and an optional form to submit the necessary information to the agency, available on the FRA website: <http://www.fra.dot.gov/safety/hazmat.htm>.

During 1999, the Hazardous Materials Division issued two notices with respect to movement approvals. The first such notice, HM-99-01, contained a brief history of the process and described

general and minimum informational requirements. That notice is superceded by this one and HM-99-01 is therefore rescinded, effectively immediately. A short time later, HM-99-04 was issued to address the presumptive approval for tank cars with certain valve defects. In essence, Notice HM-99-04 allowed residue tank cars to move directly to a repair facility without a numbered approval provided that the defective condition was found while the car was still located at the shipper's facility. That notice has also been rescinded; see Notice HM-102.

Persons seeking approval for the movement of nonconforming tank cars should be guided by the following general policies:

- Approval is required for the movement of packagings not conforming to the HMR except where the movement is short and necessary to reduce or eliminate an immediate threat or harm to human health or the environment.
- Approvals for tank cars that are leaking will generally not be issued; they may be moved "only so far as necessary to reduce or to eliminate an immediate threat or harm to human health or to the environment when it is determined its movement would provide greater safety than allowing the package to remain in place." (49 CFR § 174.50)
- Approvals for tank cars equipped with the "C-Kit" will be issued with certain provisions, including consideration of a shortened route.
- Approval is needed to move DOT-specification tank cars damaged in a derailment, even if they are secured on a flatcar or in a gondola car.
- Approval is not needed for tank cars that are overweight to the extent of one per-cent or less of the maximum gross weight as stenciled. In such cases, shippers and carriers are encouraged to calculate filling densities and outage. Approval will not generally be granted to move cars with insufficient outage.
- Approval is not needed for tank cars when the tank and/or safety relief valve is overdue for testing, provided that the tank car was filled prior to the inspection date [(49 CFR 173.31(a)(3)].
- Approval is not necessary and will not be granted for bulk packagings that contain materials not subject to the HMR. Exceptions to this policy may be considered if the reason for the non-conformance is an administrative declaration such as a railworthiness directive or an emergency order.